

1           Q     But it actually isn't a customer list if you read  
2 it, is it? I mean, some of these say that they're just  
3 inventory pages, three of them say that they're just test  
4 pages. Do you see that?

5           A     You're on which page?

6           Q     This is Page Two of Private Radio Bureau Exhibit 5,  
7 this, you know, so-called computer printout dated August 16th.

8           A     There are some -- correct. There are some that  
9 indicate that they're inventory. There's one here that's  
10 unknown. There are a couple that are listed as -- let's see,  
11 two that are listed for -- as test pages for Mike Raymond. I  
12 see several here that associate -- I have a footnote  
13 associated here that says the service -- it's no longer in  
14 service due to problems or it changed to the radio common  
15 carrier.

16          Q     And actually if you look at those footnotes, that's  
17 asterisk Number One next to Malcolm Combs, Ernie White, and  
18 Gary Wortenburg and then you look at asterisk Number Two next  
19 to James Howt which says changed to 152.150 because of system  
20 problems, if you subtract those out, you're left with no  
21 customers at all. Isn't that correct? Take your time going  
22 over it.

23               JUDGE CHACHKIN: I'm having problems with this  
24 theory of redirect. It can't be redirect since you didn't put  
25 on any witnesses. Is that correct? You're not sponsoring

1 this person. I'm letting you examine, but it's going to have  
2 to be in the form of cross examination and since this -- these  
3 subjects have not been gone into, you can't ask these  
4 questions.

5 In other words, you had your chance to ask questions  
6 after we had direct examination by the Bureau. Then you had a  
7 chance to ask cross or whatever you want to call it. Then we  
8 had Mr. Hardman asking questions. The only one who could ask  
9 redirect is the Bureau since the Bureau sponsored this  
10 witness. You did not sponsor this witness, so you certainly  
11 can't be given the right to treat this witness as your own.  
12 I'm permitting you to ask questions in the form of cross and  
13 I'm not going to permit this line of questioning since we're  
14 not dealing with new subjects raised by the Bureau.

15 MR. JOYCE: Your Honor, I'll agree to whatever you  
16 say in terms of the order of cross. The only reason I'm doing  
17 it this way is I was trying to honor your preferences this  
18 morning about the order of questioning.

19 JUDGE CHACHKIN: No, I did -- I did follow. The  
20 Bureau started off with direct.

21 MR. JOYCE: I follow. And this is --

22 JUDGE CHACHKIN: And then I let you ask questions.  
23 It had to be cross. Since you didn't sponsor the witness, it  
24 couldn't be direct examination.

25 MR. JOYCE: I need some clarification, too, because

1 | this is most decidedly an area that Mr. Hardman went into.

2 | JUDGE CHACHKIN: That's right. And the Bureau has  
3 | the right on redirect to go into it. But you don't have a  
4 | right to because your cross -- if you wanted to go into these  
5 | areas, you should've done it when you had your opportunity,  
6 | when you were asking questions.

7 | MR. JOYCE: But I didn't understand at the time,  
8 | Your Honor, that -- unless I did this in the form of cross  
9 | examination -- this -- as I say, I will do it in whatever  
10 | order you wish.

11 | JUDGE CHACHKIN: Well, I want to make clear, if  
12 | you're not sponsoring any witnesses, obviously you don't have  
13 | a right to conduct redirect examination.

14 | MR. JOYCE: That's fine.

15 | JUDGE CHACHKIN: All you can do is conduct cross  
16 | just like Mr. Hardman is.

17 | MR. JOYCE: That's fine.

18 | JUDGE CHACHKIN: And if the Bureau counsel doesn't  
19 | raise any new areas and neither you nor Mr. Hardman has a  
20 | right to question further, that's the end of it.

21 | MR. JOYCE: But this is -- was an area of direct  
22 | testimony, was an area of --

23 | JUDGE CHACHKIN: I didn't say -- I said if on  
24 | redirect the Bureau does not go into new areas, you -- neither  
25 | you nor Mr. Hardman have a right to conduct further

1 examination.

2 MR. JOYCE: I understand. My problem --

3 JUDGE CHACHKIN: The witness is excused at that  
4 point.

5 MR. JOYCE: I perfectly understand, Your Honor. My  
6 problem is if we had this clarification before Private Radio  
7 Bureau had its redirect, I would have asked him these  
8 questions on cross examination.

9 JUDGE CHACHKIN: Well, you didn't know what the  
10 Bureau was going to ask on redirect.

11 MR. JOYCE: It doesn't matter. My questions are  
12 irrespective of their redirect. That's my whole point, Your  
13 Honor.

14 JUDGE CHACHKIN: Well, I understand. But why didn't  
15 you ask these questions on cross when you had the witness on  
16 cross if you felt you wanted to go into these areas?

17 MR. JOYCE: Am I not entitled to cross examine the  
18 witness on the same subjects that Mr. Hardman is cross  
19 examining the witness?

20 JUDGE CHACHKIN: Exactly. And you had an  
21 opportunity on cross. You -- I called on you to cross examine  
22 the witness. Then Mr. Hardman cross examined the witness.  
23 And if Ms. Foelak had said at that point, "I have no further  
24 questions," then you wouldn't have any right to ask any  
25 further questions.

1 MR. JOYCE: There's a misunderstanding. At the time  
2 I was questioning him, Your Honor, I was under the impression  
3 that I was limited to direct examination of the witness, not  
4 cross examination.

5 JUDGE CHACHKIN: I don't understand why you would be  
6 under that impression since it wasn't your witness.

7 MR. JOYCE: Because that's what I was instructed  
8 this morning, Your Honor.

9 JUDGE CHACHKIN: Do you have any objection, Mr.  
10 Hardman? Now, I'm going to have to permit Mr. Hardman an  
11 opportunity to further examine and so we can go on forever  
12 with this. The way we're proceeding is, is if it's -- if you  
13 want -- you haven't put on any witnesses. So the Bureau will  
14 go first, you will ask your questions, Mr. Hardman will ask  
15 his questions, and if no areas are raised -- new areas are  
16 raised on redirect, that's the end of the examination.

17 MR. JOYCE: I understand that now, Your Honor.

18 JUDGE CHACHKIN: I'll permit you, Mr. Hardman, if  
19 you need any follow-up questions on this since he's getting a  
20 second crack. Go ahead.

21 BY MR. JOYCE:

22 Q Mr. Walker, if you subtract out from this exhibit  
23 the names that have asterisks next to them, isn't it true that  
24 you're left with no paying customers?

25 MR. HARDMAN: Your Honor, I'm going to object to his

1 question. The witness never testified that he knew what these  
2 documents purported to be. Certainly he didn't give any  
3 instructions to the --

4 JUDGE CHACHKIN: I'll sustain the objection. This  
5 witness has no knowledge of what these documents mean. This  
6 is all he was given. If you want to question somebody, you'll  
7 have to question someone who provided these documents.

8 MR. JOYCE: All right, Your Honor.

9 JUDGE CHACHKIN: This witness is not in a position  
10 to testify what this means or what it doesn't mean.

11 BY MR. JOYCE:

12 Q Mr. Walker, if someone is causing interference to  
13 somebody on a shared frequency, are they -- is the person  
14 who's not causing the interference required to shut down while  
15 that interference continues or are they allowed to transmit as  
16 best they can on top of that interference?

17 A They would not be allowed to cause interference to  
18 the other station.

19 Q That wasn't my question though and I appreciate  
20 that. My question was if someone is causing interference to a  
21 shared frequency licensee, is the person who is not causing  
22 the interference allowed to the best of his ability to  
23 transmit on top of the interference?

24 A I don't believe that I can answer that. Neither of  
25 these people are permitted to cause interference.

1 Q I know. The -- again, we're having a problem with  
2 understanding my question. My question is --

3 MR. HARDMAN: Your Honor --

4 MR. JOYCE: Allow me to repeat the question if I  
5 could, please, Mr. Hardman.

6 BY MR. JOYCE:

7 Q I'm sure that in many instances, you go out into the  
8 field, broadcasting cases, private radio, whatever, somebody  
9 is causing interference. Maybe it's intentional or it's  
10 unintentional. There's also such a thing as legitimate  
11 transmissions, not interference at all. Do we understand each  
12 other on those terms?

13 A I think I understand your question.

14 Q If on a shared PCP frequency, if one person is  
15 operating properly in accordance with the FCC's rules, they're  
16 monitoring the channel, they have legitimate paging customers  
17 out there, and they're trying to send a signal to those paging  
18 customers, but they're receiving interference from non-paging  
19 transmissions. It's simply whatever you want to call it, any  
20 kind of ambient, electrical interference, intentional/  
21 unintentional, is it proper for the person who is not causing  
22 interference, who is complying with the FCC's rules and trying  
23 to send out a page, is it proper for that person to send out a  
24 page on top of the harmful interference?

25 MR. HARDMAN: Your Honor, I'm going to object to

1 that. It's a hypothetical question that has no discernable  
2 relevance to this proceeding.

3 MR. JOYCE: It's hardly hypothetical.

4 JUDGE CHACHKIN: But you're asking him whether it's  
5 permissible for retaliation to engage in interference. That's  
6 basically what you're asking.

7 MR. JOYCE: No, that's not my question.

8 JUDGE CHACHKIN: Oh, that's exactly what you're  
9 asking. You're saying, "If one is doing wrong, then is it all  
10 right for me to do wrong? Because I didn't do it in the first  
11 place." I mean, that's what you're asking essentially and I  
12 don't think the witness -- can the witness answer that  
13 question, is it different being harmful interference?

14 MR. WALKER: I believe I can answer this.

15 JUDGE CHACHKIN: What's the answer?

16 MR. WALKER: Yes. He's allowed to continue with his  
17 transmissions provided he's not causing interference to  
18 someone else.

19 BY MR. JOYCE:

20 Q It was a simple question. Thank you, Mr. Walker.  
21 When you were inspecting, Mr. Hardman was trying to isolate, I  
22 guess, what periods of time you were monitoring Capitol and  
23 when you weren't. When you were at RAM's facilities, were you  
24 able to monitor Capitol's transmissions as well?

25 A Not when we're inside the building. When we're in



1 the vehicle, as best I remember, yes, we could.

2 Q There weren't monitors or similar gizmos that you  
3 had in your vehicle inside RAM's headquarters that you could  
4 use to monitor?

5 A RAM may well have had some monitoring capability. I  
6 suspect they did, but I don't recall.

7 Q Mr. Hardman mentioned intermodulation which we've  
8 ruled out as the cause of interference. He had also mentioned  
9 a malfunction. Was the interference that you determined  
10 during your investigation caused by malfunction?

11 MR. HARDMAN: Your Honor, I'm going to object  
12 because the witness again has testified that he had never  
13 determined --

14 JUDGE CHACHKIN: Sustained. Sustained.

15 BY MR. JOYCE:

16 Q Did you determine that there was any malfunction of  
17 Capitol's equipment when you were investigating it --  
18 inspecting it?

19 A I could not identify a malfunction. It is apparent  
20 to me that there was something that is not functioning  
21 appropriately, simply because Capitol's -- Capitol was capable  
22 or did transmit while RAM's transmitters were in the air. You  
23 know, because that happened, something did not work as it  
24 should have. I was not able to identify precisely what or  
25 why.

1 Q Did you determine that it was due to inadvertence on  
2 the part of Capitol?

3 A No, I didn't.

4 Q When you were monitoring, did you detect any  
5 community repeater traffic on Capitol's frequency?

6 A No, but our monitoring was on the private carrier  
7 channel, not on the link frequency.

8 Q A community repeater, my understanding, Ken Hardman  
9 uses that term to refer to a private radio community repeater.  
10 Is that your understanding of that?

11 A My understanding is the same, yes.

12 Q In other words, it shared a channel, two-way type  
13 operation.

14 A Correct.

15 Q So that it's not the same as the control link, just  
16 so we understand each other.

17 A It's different from the control link, but operating  
18 on the same channel, correct. Different communications.

19 Q In any event, you did not determine that a community  
20 repeater was causing an interference problem on this  
21 frequency.

22 MR. HARDMAN: Your Honor, I object. Again, the  
23 witness testified he didn't monitor the link frequency.

24 JUDGE CHACHKIN: Sustained.

25 BY MR. JOYCE:

1 Q Did any -- I'm not limiting my question to -- I'm  
2 sure that I'm the cause of the confusion here, Mr. Walker.  
3 I'm not limiting my question to any control link whatsoever.  
4 There is something called a community repeater. It's a type  
5 of operation. When you were monitoring 152.48, did you  
6 determine that there was any community repeater traffic on  
7 that frequency?

8 A No, we didn't.

9 Q Mr. Hardman and you talked about the storage  
10 capabilities of Capitol's system. I'm not sure I fully  
11 understood that discussion. Are we referring to information  
12 that's stored in the terminal?

13 A The capability of the paging terminal to store a  
14 number of pages until such time as the channel is available to  
15 transmit. So that storage capability was considerably  
16 limited.

17 Q But where I got lost there was I thought that Ken  
18 Hardman and you were talking about two different things and  
19 this is what I wanted to clarify. There is information that  
20 can be stored and then sent out over that 152.48 frequency,  
21 correct?

22 A Correct.

23 Q But then there's also in addition to that, isn't  
24 there, transmissions over that frequency?

25 A If the channel is idle, yes, there's real-time

1 | trans-- real-time pages.

2 |       Q     So this tone sequence test, as it's been called,  
3 | that was sent out, it could've been going out live over that  
4 | frequency. Plus in addition, if those tones were stored in  
5 | this memory bank of the terminal, all the information that was  
6 | stored was also going out over that frequency. Isn't that  
7 | possible?

8 |       A     If I understand you correctly, you said from one  
9 | test page, one test sequence, you say there's perhaps two  
10 | things being transmitted?

11 |       Q     No. Again, I apologize for not being clear in my  
12 | question. The tone sequence is stored in the terminal just  
13 | like a recorded message. Is that a fair analogy?

14 |       A     Yes, I think so.

15 |       Q     So just as I can speak to you live using this  
16 | microphone here, if I had a tape recorder next to me and were  
17 | using this microphone as a 152.48 frequency, they could've  
18 | been sending those tones live over 152.48 and then the tape-  
19 | recorded same sequence would've been also going out following  
20 | those live transmissions.

21 |           MR. HARDMAN: Your Honor, I object to that. There's  
22 | no foundation for any --

23 |           JUDGE CHACHKIN: Sustained.

24 |           BY MR. JOYCE:

25 |       Q     Although the tone sequence was of a certain

1 duration, when it's stored, that's obviously adding to the  
2 air-time that it would take up. Isn't that correct, Mr.  
3 Walker?

4 A If it's only a single sequence, no, I don't think  
5 so. But you can store multiple -- or in this case, they were  
6 storing multiple sequences and yes, they are accumulative,  
7 each sequence taking roughly twenty seconds.

8 Q Again, if this is hypertechnical, Your Honor, I --  
9 so I apologize if I'm not perfect in verse and in the  
10 terminology. Well, what's happening then is that those  
11 transmissions that you were monitoring varied in length. It  
12 wasn't the same each time, that RAM would transmit for a  
13 certain period of time and then this tone sequence that had  
14 been backing up, waiting for the channel to be clear, could be  
15 accumulating five, six, seven, eight seconds worth of time and  
16 then would go out over the frequency. Is that what was  
17 happening?

18 A Correct. Except each sequence, each time they  
19 wanted to send a sequence, it was twenty -- roughly twenty  
20 seconds. If I was not able -- if we were not able to transmit  
21 the sequence during the current minute, that sequence would be  
22 stored and perhaps the next sequence as well. Then when we  
23 have the opportunity to transmit -- we would transmit the two  
24 sequences consuming forty seconds of air-time.

25 Q That was the point I was trying to get at earlier.

1 So it is possible then that there was an accumulative effect.

2 A It is accumulative, yes, to a point, to its -- to  
3 the limit on its storage capability.

4 Q Now, on the other side of 152.48, RAM is doing the  
5 same thing. They have a terminal that's storing paging  
6 messages. They send those out and it takes up a certain  
7 amount of air-time, correct?

8 A Correct.

9 Q Now, if that tone sequence of Capitol's comes up in  
10 the middle of RAM's transmissions, then you've left on the  
11 tape, if you will, a whole bunch of RAM pages that didn't get  
12 out on the air, correct? Is that what was happening?

13 A They went out on the air. Perhaps they were  
14 interfered with. Perhaps you or I, as a subscriber to the  
15 paging, did not get the page. But the transmission was made.

16 Q But it's also possible, based on your understanding  
17 of how these paging terminals store stuff, that if there was  
18 so many RAM pages stored in there, that perhaps not all of  
19 them even got out on the -- out of the terminal and onto the  
20 frequency before this repeated tone sequence came up on the  
21 air, correct?

22 A They -- perhaps not all of them got on the air  
23 before Capitol's transmitter came up. As far as I know, the  
24 rest of them did get -- were transmitted. RAM was already on  
25 the air. My understanding of the functioning of this busy

1 monitor and the associated equipment is that once the  
2 transmitter is on the air, it goes until it's finished.

3 Q So what we have is a cumulative problem. As Capitol  
4 keeps sending out these tones and they're going from twenty  
5 seconds to forty seconds, plus you're adding those seven-  
6 second morse code identifications, that -- now you're talking  
7 some serious time, correct?

8 MR. HARDMAN: I object, Your Honor. The witness  
9 clearly testified that Capitol's storage capability was  
10 limited and that the cumulative effect of storing the test  
11 pages was limited to the amount of the storage capability.

12 JUDGE CHACHKIN: I'm going to sustain the objection  
13 and you told me you had five minutes.

14 MR. JOYCE: I'm sorry, Your Honor.

15 JUDGE CHACHKIN: This is way past five minutes and  
16 the whole procedure was improper in the first place since  
17 you're now turning this witness into your own witness and you  
18 aren't entitled to do so. Do you have any questions, Mr.  
19 Hardman?

20 MR. JOYCE: One last question, Your Honor?

21 JUDGE CHACHKIN: No, I'm not permitting any further  
22 questioning. Any questions, Mr. Hardman?

23 MR. HARDMAN: Unfortunately, Your Honor, I've got a  
24 couple of lines that were -- as a result of Mr. Joyce's  
25 question. I think I can be very brief.

1 JUDGE CHACHKIN: If you can't, we can pick this up  
2 tomorrow morning at 9:30.

3 MR. HARDMAN: Well, for the sake of the record, I  
4 think it would be useful to clarify a couple of these points.

5 JUDGE CHACHKIN: If you can do it quickly, fine.

6 RECROSS EXAMINATION

7 BY MR. HARDMAN:

8 Q Mr. Walker, you were asked some questions about the  
9 community -- by Mr. Joyce on the community repeaters and the  
10 link frequency. Do you recall those --

11 A Correct.

12 Q -- that conversation? All right. Isn't it true  
13 that the link frequencies which are assigned to control  
14 stations used by PCP systems such as operated by RAM and such  
15 as operated by Capitol are also assigned and shared by  
16 community repeater systems?

17 A I believe this is true, yes.

18 Q So that in the same general area, you can have a  
19 control link operating and a totally independent system  
20 operating a community repeater system on the same channel.  
21 Isn't that true?

22 A That's entirely possible, yes.

23 Q And when that community repeater base station comes  
24 on the air, it has the potential for desensing the link  
25 receiver and effectively disabling it, does it not?



1           A     It does.

2           Q     You were also -- had a couple -- some discussions  
3 about the transmissions real-time versus storage. Do you  
4 recall those questions?

5           A     Yes.

6           Q     And I think there was an answer that was not clear  
7 on the record in terms of the mode that a paging terminal such  
8 as operated by Capitol or RAM is in if it does -- if it has  
9 this storage capability. Isn't it true that if a system is  
10 operating automatically in the storage mode, that every page  
11 that comes into that terminal is, in fact, stored before it's  
12 transmitted over the air?

13          A     Every page --

14          Q     Regardless.

15          A     Regardless. I would imagine that as opposed to  
16 real-time, somehow it does pass through this storage area.

17          Q     So you didn't mean to imply that the same terminal  
18 would operate alternately in the real-time versus storage  
19 mode, did you?

20          A     I'm not sure that I can really answer the question  
21 here on the functioning of the terminal. I -- there's not to  
22 be perhaps some delay as opposed to real-time. There's  
23 probably going to be some delay to determine whether the  
24 channel is available for -- to transmit the signal or not and  
25 for a decision to be made to store the page or not.

1           Q     Well, what I'm trying to understand is what you  
2 intended your testimony to be and did you intend to testify  
3 that these -- that Capitol's terminal could operate  
4 alternately in the storage mode versus the real-time mode?  
5 Did it have that capability?

6           A     No, I did not indicate that it would alternate it's  
7 -- I intended to indicate that it's available for storage at  
8 all times.

9           Q     And -- so as far as you know, every page that came  
10 into that terminal --

11          A     Could go into storage if need be.

12          Q     And in fact, it might go into storage whether it  
13 needed to or not. Isn't that true?

14          A     I cannot answer that.

15          Q     Now, related to the storage question is how these  
16 tone sequences were generated and when you and I were talking  
17 about this earlier, I thought I understood you to say that  
18 this was -- this was done through a program in a terminal.  
19 The tones were generated as a result of a program in the  
20 terminal. Is that --

21          A     The tones, from my understanding, are generated  
22 within the paging terminal.

23          Q     So these tones never do go into a terminal like a  
24 regular page. They're just generated there, are they not?

25          A     Sir, I'm not sure I understand your question.

1 Q A regular page will come in and it will be stored in  
2 the terminal. It's created from an external force. That is  
3 quite different than the tone sequences that are generated as  
4 a result of this program, is it not?

5 A I'm still confused. I don't understand the  
6 question.

7 Q I believe that the -- or at least the way I  
8 understood the thrust of the question from Mr. Joyce, your  
9 answer could be read to imply that the test tones, the tests  
10 that were generated on the terminal, appeared and came into  
11 storage in the terminal, just like any other page. Do you  
12 know whether that's so or not?

13 A I believe that would be true, yes.

14 Q And the fact that the tone -- that these were tones  
15 generated internally by a program as opposed to externally  
16 generated from some source through the telephone line wouldn't  
17 make any difference on your answer?

18 A As far as I know, the system would not make a  
19 distinction.

20 MR. HARDMAN: That's the --

21 JUDGE CHACHKIN: Do you have any objection, Ms.  
22 Foelak, to the witness being taken on direct at this time?

23 MS. FOELAK: Certainly not.

24 JUDGE CHACHKIN: All right. Then that's what we'll  
25 start with tomorrow at 9:30.

1                   (Whereupon, at 4:05 p.m. on Tuesday, February 1,  
2 1994, the hearing adjourned.)  
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**IN THE MATTER OF CHARLESTON, WEST VIRGINIA**

**Name**

PR DOCKET NO. 93-231

**Docket No.**

WASHINGTON, D.C.

**Place**

FEBRUARY 1, 1994

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 40 through 208, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

February 14, 1994  
**Date**

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